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IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
APPELLATE DIVISION

American Airlines,	)	
	)	
Appellant,	)	**Civ. App. No. 1998-092**
	)	
v.	)	Re: Terr. Ct. S.C. Nos. 1034/1994,
	)	1361/1994, 268/1998, 581/1998
Mafolie Foods Co., Inc.,	)	& 582/1998
	)	
Appellee.	)	
	)	

On Appeal from the Territorial Court of the Virgin Islands

Considered: May 18, 2001
Filed: January 15, 2002

BEFORE: **RAYMOND L. FINCH,** Chief Judge, District Court of the Virgin Islands; **THOMAS K. MOORE,** Judge of the District Court of the Virgin Islands; and **EDGAR D. ROSS,** Territorial Court Judge, Division of St. Croix, Sitting by Designation.

ATTORNEYS:

David A. Bornn, Esq.
Rochelle M. Bermudez, Esq.
St. Thomas, U.S.V.I.
Attorneys for Appellant.

MEMORANDUM

PER CURIAM.

In this consolidated appeal, American Airlines ["American" or "appellant"] appeals five judgments entered by the Small Claims Division of the Territorial Court in favor of Mafolie

Foods Co., Inc. ["Mafolie" or "appellee"]. After the following brief summary of the general background for all five cases, we discuss separately the issues raised in each case.

I. BACKGROUND

Mafolie, a Virgin Islands wholesale food distributor, regularly purchased large quantities of perishable food items from stateside companies and transported them to the island via express freight service offered by American. Up until the time of the small claims actions brought below, Mafolie and American had an ongoing relationship manifested by a regular series of individual contracts for shipping perishable goods via American's express service. The relevant aspects of each contract for shipment were embodied in American's established tariffs and on the back of the airbill for each shipment, which set forth provisions limiting American's liability for delay, damage, or loss. Mafolie regularly paid premium rates for 24-hour delivery, but at the same time regularly ensured that its purchases were packed to withstand a 48-hour delivery time. For each of the five transactions at issue, Mafolie claimed that delivery was late (more than 48 hours) and/or damaged upon arrival. To varying degrees of clarity and specificity, American countered that its liability was limited by the terms set forth on the

airbill, and as a result, Mafolie was not entitled to judgment. In each case, the Territorial Court entered judgment in favor of Mafolie, although different theories underlay the judgments.

II. DISCUSSION

The Appellate Division exercises plenary review over the Territorial Court's application of legal precepts and reviews its findings of fact for clear error. V.I. CODE ANN. tit. 4, § 33. Paragraphs 7(b) and 15 of the airbill set forth the relevant provisions of the contracts between American and Mafolie:

> 7(b). In consideration of Carrier's rate for the transportation of any shipment, which is in part dependent upon the declared value of shipment, Carrier's liability of any kind whatsoever (loss, damage or delay) shall be limited to an amount not exceeding . . . the declared value in case of loss, damage or delay of the entire shipment (but not less than $50.00 per shipment); and in the event of loss, damage or delay of part of the shipment the average declared value per pound of the shipment multiplied by the number of pounds of that part of the shipment lost, damaged or delayed (but not less than $50.00 per shipment); plus the amount of any transportation charges for which Carrier has been paid for such part of the shipment lost, damaged, or delayed.
>
> In no case shall Carrier's liability exceed the actual value of the goods shipped.
>
> . . . .
>
> 15. Carrier shall not be liable unless an action is brought within 2 years after the date written notice is given to the claimant that Carrier has disallowed the claim in whole or in part.

(*See* App. at 286.) For each transaction at issue, the terms of this airbill governed the relationship between Mafolie and American and determine the limit of American's liability for loss, damage, or delay. *See First Pennsylvania Bank, N.A. v. Eastern Airlines*, 731 F.2d 1113, 1122 (3d Cir. 1984) (holding that a carrier "may limit its liability to the agreed value of the goods, provided that the shipper has the option of obtaining coverage for the full value of its goods, is made aware of that option, and knowingly chooses to pay a lower price for lesser coverage").

A. Small Claim No. 1034/94

In this case, Mafolie claimed that on two separate occasions shipments of perishable goods arrived late and damaged. A November 1992 shipment arrived partially damaged, resulting in a claim for partial loss in the amount of $2,922.74 (which included an amount for partial freight), and a March 1993 shipment arrived completely "mushed," resulting in a claim for total loss in the amount of $1,542.50 for the loss of the goods pursuant to an invoice paid by Mafolie plus freight of $373.88. At trial, American directed the trial judge's attention to the limitations provisions on the back of the airbill. Nevertheless, the trial judge found that a certain letter written by a representative of American to Mafolie promising a maximum 24-hour transit time for

express service constituted the actual terms of the contract "in full force and effect" between the parties. (*See* App. at 71 ("American Airlines points out to a provision in the Airway Bill, allowing it to have 48 hours within which to have the product in transit, but the Court finds that the actual contract terms were those as set forth in the letter by Miss Furth . . . .") Because the transit time was greater than twenty-four hours, the Territorial Court entered judgment in favor of Mafolie for $4,893.04, the total amount claimed for both shipments. On appeal, American contests only the amount awarded for the March 1993 shipment ($1,542.50 plus $373.88 freight charges). According to American, its liability is limited by the terms of the airbill to the declared value of the goods, which for that particular shipment was only $1,000.00. (*See* App. at 1 (March 31, 1993 airway bill).) We agree. As discussed above, the terms of the airbill govern the parties' relationship. For the March 1993 shipment, American's liability was limited to the declared value of the goods, which was $1000.00, plus freight in the amount of $377.80. (*See id.* ¶ 7(b).)

American further asserts that Mafolie was not entitled to any amount for shipping charges because a provision contained in a shipper's optional provision on the back of the airway bill controls these contracts and would not allow recovery for any

amount above the declared value, freight charges notwithstanding. (*See* Br. of Appellant at 10 (setting forth a portion of the "shipper's option" waiver); App. at 286 (example of airbill).) Even if that provision could be read to exclude recovery for freight charges, it only applies when the shipper has expressly elected that option by indicating that election on the face of the airbill and by paying the applicable rate for it. (*See* App. at 286.) There is nothing in the record to indicate that Mafolie in fact elected this option or paid the additional fee for it.

Accordingly, we will reverse the decision of the Territorial Court and remand for entry of judgment in favor of Mafolie for $4,350.54, which is the amount of the original judgment less the $542.50 erroneously awarded for the March shipment in excess of the declared value.

B. Small Claims No. 1361/1994

Mafolie claimed that a January 1994 shipment of seafood arrived late and completely spoiled. The declared value on the airway bill for this shipment was $2,389.38, and freight charges were $247.50. (*See* App. at 7.) The Territorial Court entered judgment for Mafolie in the entire amount. Again, American argues on appeal that its liability is limited by the terms of the airway bill to the declared value of the goods, which allegedly did not include liability for freight charges, citing

the "shipper's option" waiver on the back of the airway bill. This argument is without merit.

Paragraph 7(b) expressly provides for recovery for the declared value plus freight, and American points to no evidence in the record that Mafolie selected the "shipper's option" provision and paid the additional fee for it. The judgment of the Territorial Court in this case will be affirmed.

C. Small Claims No. 268/1998

In February 1994, Mafolie submitted a claim with American that a shipment arrived late and damaged. On March 1, 1994, American denied Mafolie's claim in writing. Mafolie wrote American and asked it to reconsider the claim, and on November 16, 1994, American again denied the claim. In January 1995, Mafolie demanded that American reinstate its claim and threatened to "take all appropriate steps to safeguard [its] interests." Sometime later, an American cargo sales manager, Tom Weaver, flew to St. Thomas to see L. Tauro Tagini, the secretary of Mafolie Foods, to review this claim and others. Mr. Weaver stated that he would "get back to" Mr. Tagini regarding American's response to Mafolie's claims. Mr. Tagini did not hear from Mr. Weaver again. Mr. Tagini testified that in approximately February 1998 (nearly four years after the original claim was denied), a new manager for American came to St. Thomas and led Mafolie to

believe that American was still considering this claim as well as others that were pending at the time. Mafolie filed its complaint in small claims court on February 24, 1998, seeking total damages of $3,126.40.

At trial, American asserted that Mafolie's claim was time-barred pursuant to paragraph 15 of the airway bill, which provides that any action against American must be brought within two years of written notice that a claim is denied. This case was filed in the Territorial Court nearly four years after the initial written notice of denial. Implicitly accepting the airway bill as the governing contract, the trial judge acknowledged the suit limitations clause, but nevertheless found that American was equitably estopped from asserting it. (*See* App. at 162.) According to the trial judge, Mafolie "relied on American Airline's representations that American Airlines was actively reconsidering the denial of the claim and did not, to Mafolie Foods' detriment, file the action within two years of the loss denial." (*See id.*)

Broadly stated, a party may be equitably estopped from raising a claim or defense "if it makes a materially misleading statement which the other party relies upon to his detriment." *In re Petition for Naturalization of La Voie*, 9 V.I. 130, 139, 349 F. Supp. 68, 72 (D.V.I. 1972). On appeal, American cites

cases from other jurisdictions that stand for the proposition that negotiations after a clear, final, and unequivocal denial of a claim against a carrier do not toll the limitations period under federal common law. *See, e.g., Visual Display Sys., Inc. v. Burlington Air Express, Inc.*, 1999 WL 34967 at *2 (N.D.N.Y. Jan. 20, 1999). However true that proposition may be, it is not applicable to this case because the trial judge below did not hold that the suit limitations clause was tolled or "negated." Rather, she interpreted Mafolie's arguments as an estoppel theory, for which the elements include both an affirmative, intentional act or statement on the part of the party estopped and the other party's detrimental reliance on that act.

Aside from certain letters written by Mafolie to American (which were not included in the appendix), and Mr. Tagini's testimony that Mr. Weaver came to see him to discuss pending claims (*see* App. at 146), evidence is quite scarce that American said or did anything with the intent to lead Mafolie to believe that American was conceding liability or taking a position that Mafolie could have reasonably understood to be a waiver of the limitations clause. Moreover, that American may have been "entertaining settlement talks" is not sufficient to establish an affirmative act on the part of American evidencing an intent to waive the suit limitations clause. Further, there was no

evidence to suggest that the negotiations taking place were of a character so unusual that they justified reliance on the part of Mafolie that American did not intend to assert the limitations clause as a defense. *See Dewerd v. Bushfield,* 993 F. Supp. 365, 369 (D.V.I. App. Div. 1997) ("Waiver . . . may be shown by express declarations, or by acts and declarations manifesting an intent and purpose not to claim the supposed advantage, or it may be shown by a course of acts and conduct . . . ." (internal citation and quotations omitted)). Accordingly, the judgment of the Territorial Court in S.C. No. 268/1998 will be reversed.

D. Small Claims Nos. 581/1998 and 582/1998

The claims and issues raised in these consolidated actions are similar to those raised in S.C. No. 268/1998. (*See* Part II.C, *supra*.). Altogether, Mafolie claimed that three express shipments were late and damaged. For each claim, American asserted (1) Mafolie failed to file written notice of its claim for delay or damage within 120 days of receipt pursuant to paragraph 13 of the airway bill, and (2) the two-year limitations period set forth in the airway bill barred Mafolie's claims. The second argument, also asserted in No. 268/1998, finally found some purchase with the trial judge here, who concluded that Mafolie's claims for damages were in fact time-barred. Despite this finding, the judge went on to find that because all three

shipments failed to arrive within twenty-four hours as promised, American would be unjustly enriched if it were allowed to keep a twenty percent freight premium paid by Mafolie for delivery within twenty-four hours. The trial judge reasoned that the "extra premium has [nothing] to do with [Mafolie's] claim." (*See* App. at 282.) Accordingly, she awarded Mafolie an amount that, by her calculations, represented the twenty percent freight premium in each case ($367.50 in S.C. No. 581/1998 and $492.30 in S.C. No. 582/1998).

American contends that once the trial judge found that Mafolie's claims were time-barred, judgment should have been for American in all respects. It was only by reasoning that the twenty percent express premium was "separate and apart" from the original claim denied by American that the judge was able to keep the claim for the express service charge alive. We agree with American.

Although her findings are not crystal clear in this regard, it must be inferred that the trial judge found that, although American denied Mafolie's claim for damages due to spoilage and freight related to the lost goods, it never provided written notice that it was denying a claim for the 24-hour premium. It is quite clear from the testimony, however, that the amounts Mafolie claimed (at least in its small claims action) included

amounts for the premium, which explains the extended calculations during trial to try to figure out how much of the freight amount claimed was the premium amount and how much was the regular tariff. Indeed, with respect to S.C. No. 581/1998, Mr. Tagini testified at trial that the freight amount was included in his original claim letter to American. (*See* App. at 220.) That claim was denied in its entirety, including the claim for the premium amount. (*See* App. at 167 ("[W]e must respectfully continue to decline liability for this claim.").)

Overall, the trial judge's finding that Mafolie's original claim did not include a claim for the recovery of the 24-hour premium due to delay (so that the limitations period for an action seeking *recovery of the premium* was never triggered) is without any support in the record. Taking all the evidence into account, this Court concludes that the trial judge's finding that Mafolie's claim for the express service premium was separate from Mafolie's time-barred claims was clearly erroneous. Accordingly, the Court will affirm the Territorial Court's judgment that Mafolie's claims were time-barred and vacate the award to Mafolie for the amount paid as 24-hour premiums.

III. CONCLUSION

For the reasons stated, the Court will reverse the judgment

of the Territorial Court in S.C. No. 1034/1994 and remand for entry of judgment in favor of Mafolie Foods in the amount of $4,350.54. We will affirm the judgment of the Territorial Court in S.C. No. 1361/1994, which properly included an award for freight charges. We will reverse and vacate the judgment below in S.C. No. 268/1998 because the claim was time-barred by the applicable suit limitations clause in the governing airbill and because the evidence does not support the theory of equitable estoppel applied by the lower court. Finally, we will reverse and vacate the judgments in S.C. Nos. 581/1998 and 582/1998 because Mafolie's claims were barred in their entirety by the applicable limitations clause in the governing airbill.

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Mafolie Foods Co. Inc,	)	
	)	
Appellee.	)	
	)	

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Before: RAYMOND L. FINCH, Chief Judge, District Court of the Virgin Islands; **THOMAS K. MOORE**, Judge of the District Court of the Virgin Islands; and **EDGAR D. ROSS**, Territorial Court Judge, Division of St. Croix, Sitting by Designation.

ATTORNEYS:

David A. Bornn, Esq.
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St. Thomas, U.S.V.I.
Attorneys for Appellant.

ORDER OF THE COURT

PER CURIAM.

AND NOW, this 15th day of January, 2002, having considered the parties' submissions and arguments, and for the reasons set forth in the Court's accompanying Opinion of even

date, it is hereby

ORDERED that the judgment of the Territorial Court in S.C. No. 1034/1994 is **REVERSED** insofar as it awarded any amounts above the declared value of the March 1993 shipment. The matter is remanded to the Territorial Court for entry of judgment in favor of Mafolie Foods, Co. in the amount of $4,350.54. It is further

ORDERED that the judgment of the Territorial Court in S.C. No. 1361/1994 is **AFFIRMED**. It is further

ORDERED that the judgment of the Territorial Court in S.C. No. 268/1998 is **REVERSED AND VACATED**. The matter is remanded for entry of judgment in favor of American Airlines. It is further

ORDERED that the judgments of the Territorial Court in S.C. Nos. 581/1998 and 582/1998 are **REVERSED AND VACATED**. Both matters are remanded to the Territorial Court for entry of judgment in favor of American Airlines.

ATTEST:
WILFREDO F. MORALES
Clerk of the Court

By:_____
Deputy Clerk

Copies to:

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